

DEPARTMENT of TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Docket No. FMCSA – 2004 - 1998-3706

MOTOR CARRIER SAFETY STANDARDS: DRIVERS HOURS of SERVICE
and
RECORDS of DUTIES STATUS; SUPPORTING DOCUMENTS REQUIREMENTS

Comments of
UNIGROUP, INC.

UNIGROUP, INC.

One Premier Drive
Fenton, Missouri 63026

(636) 349-2525

Dated: January 3, 2005

Docket FMCSA-1998-3706, Drivers Hours of Service and Records of Duties Status;

Supporting Documents Requirements

I. Comments of UniGroup, Inc.:

UniGroup, Inc. ("UniGroup"), the parent company of Mayflower Transit, LLC ("Mayflower") and United Van Lines, LLC ("United") submits the following comments to the Supplemental Notice of Proposed Rulemaking issued by the Federal Motor Carrier Safety Administration ("FMCSA") which was published on or about November 3, 2004 at Federal Register # 04-24176. The intent of the notice is to solicit comments for the establishment of a rule requiring motor carriers to verify accuracy of drivers' hours of service and records of duties status by using motor carrier supporting documents.

UniGroup continues to support efforts by the FMCSA and other industry associations like the American Moving & Storage Association to make truck transportation safer and to develop rules and regulations which meet the changing landscape of the moving and storage industry. UniGroup has implemented computer programs and other written policies and procedures which are designed to verify the accuracy of hours of service documents submitted by the drivers of its van lines, Mayflower and United. Furthermore, Mayflower and United invest heavily in driver training methods and in specific log auditing software with the intent of increasing the level of compliance with hours of service rules. UniGroup supports the establishment of appropriate carrier policies and procedures, but has specific concerns regarding data ownership and privacy of such auditing procedures. UniGroup also objects to future use of information regarding carriers' enforcement of its policies and procedures by federal authorities for additional civil and criminal penalties.

II. Specific Comments:

The stated purpose of the request for comments contained in the Supplemental Notice Of Proposed Rulemaking ("SNPRM") is to provide clear and more detailed definitions of "supporting documents", "employee", "driver", and a requirement for each motor carrier to use a self-monitoring system to verify accuracy of hours of service and records of duty status. Based on recent court decisions and interactions between Mayflower and United with the FMCSA, UniGroup accepts the proposition that supporting documents may include "electronic documents" but clarification is needed to establish an appropriate definition of the term. Further, the use of devices which generate such "electronic documents" are not standard among household goods carriers, its vehicles, agents or drivers. In spite of these limitations, UniGroup will supplement its log-auditing

program to include documentation which is uniformly produced and which is relevant to the purposes described in this SMPRM.

A. Ownership and Privacy

Data accumulated for hours of service compliance should be safeguarded and used solely for the purpose of hours of service compliance by the carrier. The existence and nature of a written policy and procedure for hours of service compliance and log auditing should be made available for inspection by the FMCSA, and may also be available through appropriate discovery as part of lawsuits. However, the carrier's actions in enforcing the policy which is proposed by this SNPRM and the data associated with such enforcement should not be made available to any other party except FMCSA's field agents and investigators. Allowing plaintiff's attorneys to review data regarding drivers that have been audited by the carrier, the deficiencies found by the carrier in the drivers' logs, and corrective action (inclusive of continuing education, monetary sanctions, suspensions or terminations) taken against the driver by the carrier would result in catastrophic unintended consequences to carriers. Allowing plaintiff's attorneys unfettered access to this information would only serve as a blueprint for plaintiff's attorneys to attack the carriers and their drivers.

B. Duplicativeness of Sanctions

It is clear that the elements of the policies and procedures developed by a carrier in response to this SNPRM and the proof of the carrier's compliance with its policies should be made available to FMCSA's field agents and investigators. However, allowing FMCSA's field agents and investigators to use information regarding corrective action taken by a carrier against its drivers to form an element of an enforcement action against a carrier during an audit would result in undue prejudice to the carrier. In addition, the ICC Termination Act and the appropriate federal rules and regulations establish penalties for a carrier or driver that falsifies shipping documents. These penalties include both criminal and civil sanctions. When performing a compliance audit on a carrier relative to their hours of service compliance audits, the FMCSA and any other state or federal regulatory entity should be barred from using data against a carrier or driver to impose civil or criminal penalties when a carrier has previously taken remedial action against its driver. Without this type of limitation, a carrier would have little incentive to put a substantive policy in place, and the driver and/or carrier could be subject to multiple sanctions.

C. FMCSA Review of Carrier's Self-Monitoring System

Because the SNPRM establishes only the framework and does not provide the specifics as to the documents required to check hours of service

documents or the corrective action required when a driver fails to comply with carrier established policies, UniGroup perceives that the FMCSA's review of a carrier's hours of service auditing policy will be highly subjective. When reviewing a carrier's hours of service auditing policy and procedure, the FMCSA should take into account, at the very least, the carrier's past established safety record, its accident frequency and out-of-service history. If the FMCSA should audit a carrier and determine that the carrier's hours of service auditing policies and procedures are not adequate, the carrier should be given appropriate time to work with the FMCSA to refine its policies and procedures to come into compliance. The carrier's history of past compliance and satisfactory safety rating should weigh heavily in the FMCSA's dealings with the motor carrier.

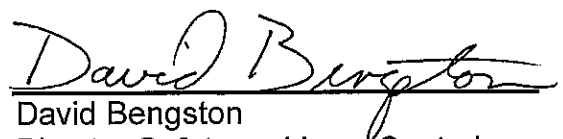
D. Use of Technology in Lieu of Paper Supporting Documents

At this time, UniGroup's systems are not designed to use electronic documents or automated technology to comply with this SNPRM. However, in the event that some other carrier uses technology which provides accuracy and integrity of data which is capable of being audited by federal authorities, UniGroup has no objection to motor carriers using technology in lieu of paper supporting documents.

III. General Comments

UniGroup supports carriers' use of an appropriate policy and procedure to audit hours of service duty status records for its drivers, but access to the data should be limited solely to the carrier or FMCSA's field agents and investigators. Allowing this data to be used at will by plaintiff's attorneys trying to prove unsafe activities of carriers and their drivers would cause a chilling effect on the moving and storage industry and its drivers. Furthermore, if a carrier takes action under its policies and procedures against a driver as a result of an audit of hours of service and duty status records, neither the driver nor the carrier should be subject to any further criminal or civil action by a federal or state entity for violations which are uncovered due to the carrier's investigation and generation of data.

Respectfully submitted,


David Bengston
Director Safety and Loss Control
UniGroup, Inc.